

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 18-0420.01 Jane Ritter x4342

SENATE BILL 18-096

SENATE SPONSORSHIP

Martinez Humenik, Moreno, Tate, Zenzinger

HOUSE SPONSORSHIP

Thurlow, Arndt, Hooton, McKean

Senate Committees
Judiciary

House Committees
Public Health Care & Human Services

HOUSE
3rd Reading Unamended
March 6, 2018

A BILL FOR AN ACT

101 **CONCERNING MODERNIZING STATUTORY PROVISIONS THAT REFER TO**
102 **TERMS RELATED TO "MENTAL RETARDATION".**

HOUSE
2nd Reading Unamended
March 5, 2018

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

SENATE
3rd Reading Unamended
February 13, 2018

Statutory Revision Committee. The bill modernizes and makes nonsubstantive changes to provisions of statute that use terms like "mental retardation" or "mentally retarded" by replacing the terms with more appropriate "intellectual and developmental disability" language.

SENATE
Amended 2nd Reading
February 12, 2018

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** The general assembly
3 declares that the purpose of Senate Bill 18-096, enacted in 2018, is to
4 effect a nonsubstantive change in statute to modernize the outdated use
5 of the terms "mental retardation" and "mentally retarded" where
6 appropriate. The general assembly further declares that these terminology
7 changes do not in any way alter the scope or applicability of the statutory
8 sections in which the terminology appears.

9 **SECTION 2.** In Colorado Revised Statutes, 18-1.3-1101, **amend**
10 (2) as follows:

11 **18-1.3-1101. Definitions.** As used in this part 11:

12 (2) "Mentally retarded defendant OR DEFENDANT WITH AN
13 INTELLECTUAL AND DEVELOPMENTAL DISABILITY" means any defendant
14 with significantly subaverage general intellectual functioning existing
15 concurrently with substantial deficits in adaptive behavior and manifested
16 and documented during the developmental period. The requirement for
17 documentation may be excused by the court upon a finding that
18 extraordinary circumstances exist.

19 **SECTION 3.** In Colorado Revised Statutes, **amend** 18-1.3-1102
20 as follows:

21 **18-1.3-1102. Pretrial motion by defendant in class 1 felony**
22 **case - determination whether defendant is mentally retarded or has**
23 **an intellectual and developmental disability - procedure.** (1) Any
24 defendant may file a motion with the trial court in which the defendant
25 may allege that such defendant is a mentally retarded defendant ~~Such~~ OR
26 A DEFENDANT WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY.
27 THE motion ~~shall~~ MUST be filed at least ninety-one days prior to trial.

1 (2) The court shall hold a hearing upon any motion filed pursuant
2 to subsection (1) of this section and shall make a determination regarding
3 ~~such~~ THE motion no later than fourteen days prior to trial. At such
4 hearing, the defendant ~~shall~~ MUST be permitted to present evidence with
5 regard to ~~such~~ THE motion and the prosecution ~~shall~~ MUST be permitted
6 to offer evidence in rebuttal. The defendant ~~shall have~~ HAS the burden of
7 proof to show by clear and convincing evidence that ~~such defendant~~ HE
8 OR SHE is mentally retarded OR HAS AN INTELLECTUAL AND
9 DEVELOPMENTAL DISABILITY.

10 (3) The court shall enter specific findings of fact and conclusions
11 of law regarding whether or not the defendant is a mentally retarded
12 defendant OR A DEFENDANT WITH AN INTELLECTUAL AND
13 DEVELOPMENTAL DISABILITY, as defined in section 18-1.3-1101.

14 **SECTION 4.** In Colorado Revised Statutes, **amend** 18-1.3-1103
15 as follows:

16 **18-1.3-1103. Mentally retarded defendant or defendant with**
17 **an intellectual and developmental disability - death penalty not**
18 **imposed.** A sentence of death shall not be imposed upon any defendant
19 who is determined to be a mentally retarded defendant OR A DEFENDANT
20 WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY pursuant to
21 section 18-1.3-1102. If any person who is determined to be a mentally
22 retarded defendant OR A DEFENDANT WITH AN INTELLECTUAL AND
23 DEVELOPMENTAL DISABILITY is found guilty of a class 1 felony, such
24 defendant shall be sentenced to life imprisonment.

25 **SECTION 5.** In Colorado Revised Statutes, 18-1.3-1104, **amend**
26 (1), (3), (4), (6) introductory portion, and (6)(c) as follows:

27 **18-1.3-1104. Evaluation and report.** (1) When the defendant

1 files a motion alleging that the defendant is a mentally retarded defendant
2 OR A DEFENDANT WITH AN INTELLECTUAL AND DEVELOPMENTAL
3 DISABILITY, the court shall order one or more evaluations of the defendant
4 with regard to such motion.

5 (3) The defendant ~~shall have~~ HAS a privilege against
6 self-incrimination that may be invoked prior to or during the course of an
7 evaluation ~~under~~ PURSUANT TO this section. A defendant's failure to
8 cooperate with the evaluators or other personnel conducting the
9 evaluation may be admissible in the defendant's HEARING CONCERNING
10 mental retardation ~~hearing~~ OR THE PRESENCE OF AN INTELLECTUAL AND
11 DEVELOPMENTAL DISABILITY.

12 (4) To aid in the formation of an opinion as to mental retardation
13 OR THE PRESENCE OF AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY,
14 it is permissible in the course of an evaluation ~~under~~ CONDUCTED
15 PURSUANT TO this section to use statements ~~of~~ MADE BY the defendant and
16 any other evidence, including but not limited to the circumstances
17 surrounding the commission of the offense as well as the DEFENDANT'S
18 medical and social history, ~~of the defendant~~, in evaluating the defendant.

19 (6) The report of evaluation ~~shall~~ MUST include, but is not limited
20 to:

21 (c) Diagnosis and an opinion as to whether the defendant is
22 mentally retarded OR HAS AN INTELLECTUAL AND DEVELOPMENTAL
23 DISABILITY.

24 **SECTION 6.** In Colorado Revised Statutes, **amend** 18-1.3-1105
25 as follows:

26 **18-1.3-1105. Evaluation at insistence of defendant.** (1) If the
27 defendant wishes to be evaluated by an expert ~~in mental retardation~~ of the

1 defendant's choice IN MENTAL RETARDATION OR INTELLECTUAL AND
2 DEVELOPMENTAL DISABILITIES in connection with the mental retardation
3 OR INTELLECTUAL AND DEVELOPMENTAL DISABILITY hearing ~~under~~
4 PURSUANT TO this part 11, the court, upon timely motion, shall order that
5 the evaluator chosen by the defendant be given reasonable opportunity to
6 conduct the evaluation.

7 (2) Whenever an expert is endorsed as a witness by the defendant,
8 a copy of any report of an evaluation of the defendant shall be furnished
9 to the prosecution within a reasonable time but not less than thirty-five
10 days prior to the mental retardation OR INTELLECTUAL AND
11 DEVELOPMENTAL DISABILITY hearing.

12 **SECTION 7.** In Colorado Revised Statutes, 18-1.3-1201, **amend**
13 (1)(a) as follows:

14 **18-1.3-1201. Imposition of sentence in class 1 felonies -**
15 **appellate review.** (1) (a) Upon conviction of guilt of a defendant of a
16 class 1 felony, the trial court shall conduct a separate sentencing hearing
17 to determine whether the defendant should be sentenced to death or life
18 imprisonment, unless the defendant was under the age of eighteen years
19 at the time of the commission of the offense or unless the defendant has
20 been determined to be a mentally retarded defendant OR A DEFENDANT
21 WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY pursuant to
22 part 11 of this ~~article~~ ARTICLE 1.3, in either of which cases, the defendant
23 ~~shall~~ MUST be sentenced to life imprisonment. THE TRIAL JUDGE SHALL
24 CONDUCT the hearing ~~shall be conducted by the trial judge~~ before the trial
25 jury as soon as practicable. Alternate jurors shall not be excused from the
26 case prior to submission of the issue of guilt to the trial jury and ~~shall~~
27 MUST remain separately sequestered until a verdict is entered by the trial

1 jury. If the verdict of the trial jury is that the defendant is guilty of a class
2 1 felony, the alternate jurors ~~shall~~ MUST sit as alternate jurors on the issue
3 of punishment. If, for any reason satisfactory to the court, any member or
4 members of the trial jury are excused from participation in the sentencing
5 hearing, the trial judge shall replace each juror or jurors with an alternate
6 juror or jurors. If a trial jury was waived or if the defendant pled guilty,
7 the hearing shall be conducted before the trial judge. The court shall
8 instruct the defendant when waiving his or her right to a jury trial or when
9 pleading guilty that he or she is also waiving his or her right to a jury
10 determination of the sentence at the sentencing hearing.

11 **SECTION 8.** In Colorado Revised Statutes, 18-1.4-102, **amend**
12 (1)(a) as follows:

13 **18-1.4-102. Imposition of sentence in class 1 felonies for crimes**
14 **committed on or after July 1, 1995, and prior to July 12, 2002 -**
15 **appellate review.** (1) (a) Upon conviction of guilt of a defendant of a
16 class 1 felony, the trial court shall conduct a separate sentencing hearing
17 to determine whether the defendant should be sentenced to death or life
18 imprisonment, unless the defendant was under the age of eighteen years
19 at the time of the commission of the offense, or unless the defendant has
20 been determined to be a mentally retarded defendant OR A DEFENDANT
21 WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY pursuant to
22 part 4 of article 9 of title 16, ~~C.R.S.~~, as it existed prior to October 1, 2002,
23 in either of which cases, the defendant shall be sentenced to life
24 imprisonment. THE TRIAL JUDGE SHALL CONDUCT the hearing ~~shall be~~
25 ~~conducted by the trial judge~~ before the trial jury as soon as practicable.
26 Alternate jurors shall not be excused from the case prior to submission of
27 the issue of guilt to the trial jury and ~~shall~~ MUST remain separately

1 sequestered until a verdict is entered by the trial jury. If the verdict of the
2 trial jury is that the defendant is guilty of a class 1 felony, the alternate
3 jurors shall sit as alternate jurors on the issue of punishment. If, for any
4 reason satisfactory to the court, any member or members of the trial jury
5 are excused from participation in the sentencing hearing, the trial judge
6 shall replace such juror or jurors with an alternate juror or jurors. If a trial
7 jury was waived or if the defendant pled guilty, the hearing shall be
8 conducted before the trial judge. The court shall instruct the defendant
9 when waiving his or her right to a jury trial or when pleading guilty, that
10 he or she is also waiving his or her right to a jury determination of the
11 sentence at the sentencing hearing.

12 **SECTION 9.** In Colorado Revised Statutes, 22-20-103, **amend**
13 (25) as follows:

14 **22-20-103. Definitions.** As used in this part 1, unless the context
15 otherwise requires:

16 (25) "Specific learning disability" means a disorder in one or more
17 of the basic psychological processes involved in understanding or in using
18 language, spoken or written. ~~which~~ THE disorder may manifest itself in
19 the imperfect ability to listen, think, speak, read, write, spell, or do
20 mathematical calculations, and includes such conditions as perceptual
21 disabilities, brain injury, minimal brain dysfunction, dyslexia, and
22 developmental aphasia. "Specific learning disability" does not include a
23 learning problem that is primarily the result of visual, hearing, or motor
24 disabilities; ~~of mental retardation,~~ ~~of~~ AN INTELLECTUAL AND
25 DEVELOPMENTAL DISABILITY; AN emotional disturbance; or ~~of~~ AN
26 environmental, cultural, or economic disadvantage.

27 **SECTION 10.** In Colorado Revised Statutes, **amend** 25-3-403 as

1 follows:

2 **25-3-403. Department to administer federal mental health**
3 **construction funds.** The department of public health and environment is
4 designated as the sole agency for carrying out the purposes of Part C of
5 Title I and Title II of the federal "Mental Retardation Facilities and
6 Community Mental Health Centers Construction Act of 1963", Public
7 Law 88-164 of the 88th congress of the United States, approved October
8 31, 1963, or any amendments thereto, and is authorized to administer a
9 state plan for carrying out ~~the~~ ITS provisions ~~thereof~~ and to accept, on
10 behalf of the state, all funds allotted to the state under the provisions of
11 ~~said~~ THE federal act. ~~or any amendments thereto.~~ Such THE STATE
12 MENTAL HEALTH AUTHORITY SHALL FORMULATE THE state plan. ~~shall be~~
13 ~~formulated by the state mental health and mental retardation authority.~~ In
14 carrying out the purposes ~~hereof~~ OF THE FEDERAL ACT, the department of
15 public health and environment is authorized to make such reports as may
16 be required by ~~said~~ THE federal act, ~~or any amendments thereto,~~ and to do
17 all things that may be required as a condition precedent to the proper
18 application for the receipt of federal grants under ~~said~~ THE federal act,
19 ~~and any amendments thereto and regulations thereof,~~ and to administer
20 and supervise the expenditure of such grants ~~for the purposes hereof~~ in
21 consultation with the mental health ~~and mental retardation~~ authority of the
22 state of Colorado.

23 **SECTION 11.** In Colorado Revised Statutes, **amend** 25-4-801 as
24 follows:

25 **25-4-801. Legislative declaration.** The general assembly declares
26 that, as a matter of public policy of this state and in the interest of public
27 health, every newborn infant should be tested for phenylketonuria and

1 other metabolic DISORDERS OR defects in order to prevent ~~mental~~
2 ~~retardation resulting therefrom~~ INTELLECTUAL AND DEVELOPMENTAL
3 DISABILITIES RESULTING FROM SUCH CONDITIONS and that the people of
4 this state should be extensively informed as to the nature and effects of
5 such METABOLIC DISORDERS OR defects.

6 **SECTION 12.** In Colorado Revised Statutes, 25-4-802, **amend**
7 (2) as follows:

8 **25-4-802. Tests for metabolic disorders or defects.** (2) The
9 state board of health has the duty to prescribe from time to time effective
10 tests and examinations designed to detect phenylketonuria and such other
11 metabolic disorders or defects likely to cause ~~mental retardation~~
12 INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, as accepted medical
13 practice indicates.

14 **SECTION 13.** In Colorado Revised Statutes, **amend** 25-4-803 as
15 follows:

16 **25-4-803. Rules.** (1) The state board of health shall promulgate
17 rules ~~and regulations~~ concerning ~~the~~ obtaining of samples or specimens
18 from newborn infants required for the tests prescribed by the state board
19 of health for the handling and delivery of the same and for ~~the~~ testing and
20 examination ~~thereof~~ to detect phenylketonuria or other metabolic
21 disorders THAT HAVE BEEN found likely to cause ~~mental retardation~~
22 INTELLECTUAL AND DEVELOPMENTAL DISABILITIES.

23 (2) The department of public health and environment shall furnish
24 all physicians, public health nurses, hospitals, maternity homes, county
25 departments of HUMAN OR social services, and the state department of
26 human services available medical information concerning the nature and
27 effects of phenylketonuria and other metabolic disorders and defects

1 THAT HAVE BEEN found likely to cause ~~mental retardation~~ INTELLECTUAL
2 AND DEVELOPMENTAL DISABILITIES.

3 **SECTION 14.** In Colorado Revised Statutes, 25-4-1004.5,
4 **amend** (1)(b) as follows:

5 **25-4-1004.5. Follow-up testing and treatment - second**
6 **screening - legislative declaration - fee - rules.** (1) The general
7 assembly finds that:

8 (b) Newborn testing is designed to identify metabolic disorders
9 that cause ~~mental retardation~~ INTELLECTUAL AND DEVELOPMENTAL
10 DISABILITIES and other health problems unless they are diagnosed and
11 treated early in life;

12 **SECTION 15.** In Colorado Revised Statutes, 25.5-6-403, **amend**
13 (3.3)(a) as follows:

14 **25.5-6-403. Definitions.** As used in this part 4, unless the context
15 otherwise requires:

16 (3.3) (a) "Intellectual and developmental disability" means a
17 disability that manifests before the person reaches twenty-two years of
18 age, that constitutes a substantial disability to the affected person, and that
19 is attributable to ~~mental retardation~~ AN INTELLECTUAL AND
20 DEVELOPMENTAL DISABILITY or related conditions, ~~which include~~
21 INCLUDING cerebral palsy, epilepsy, autism, or other neurological
22 conditions, when those conditions result in impairment of general
23 intellectual functioning or adaptive behavior similar to that of a person
24 with ~~mental retardation~~ AN INTELLECTUAL AND DEVELOPMENTAL
25 DISABILITY. Unless otherwise specifically stated, the federal definition of
26 "developmental disability" found in 42 U.S.C. sec. 15001 et seq. ~~shall~~
27 DOES not apply.

1 **SECTION 16.** In Colorado Revised Statutes, 25.5-10-202,
2 **amend** (26)(a) as follows:

3 **25.5-10-202. Definitions.** As used in this article 10, unless the
4 context otherwise requires:

5 (26) (a) "Intellectual and developmental disability" means a
6 disability that manifests before the person reaches twenty-two years of
7 age, that constitutes a substantial disability to the affected person, and that
8 is attributable to ~~mental retardation~~ AN INTELLECTUAL AND
9 DEVELOPMENTAL DISABILITY or related conditions, ~~which include~~
10 INCLUDING cerebral palsy, epilepsy, autism, or other neurological
11 conditions, ~~when those conditions result~~ WHEN THE CONDITION OR
12 CONDITIONS RESULT in impairment of general intellectual functioning or
13 adaptive behavior similar to that of a person with ~~mental retardation~~ AN
14 INTELLECTUAL AND DEVELOPMENTAL DISABILITY. Unless otherwise
15 specifically stated, the federal definition of "developmental disability"
16 found in 42 U.S.C. sec. 15001 et seq. ~~shall~~ DOES not apply.

17 **SECTION 17.** In Colorado Revised Statutes, **amend** 25.5-10-239
18 as follows:

19 **25.5-10-239. Evaluations to determine whether a defendant is**
20 **mentally retarded or has an intellectual and developmental disability**
21 **for purposes of class 1 felony trials.** Upon request of the court, the
22 executive director, or his or her designee, shall recommend specific
23 professionals who are qualified to perform an evaluation to determine
24 whether a defendant is mentally retarded OR IS A DEFENDANT WITH AN
25 INTELLECTUAL AND DEVELOPMENTAL DISABILITY, as defined in section
26 18-1.3-1101. ~~C.R.S. Any professional who is recommended shall~~ A
27 RECOMMENDED PROFESSIONAL MUST be licensed as a psychologist in the

1 state of Colorado and ~~shall~~ MUST have experience in and ~~shall have~~
2 demonstrated competence in determination and evaluation of persons
3 with ~~mental retardation~~ INTELLECTUAL AND DEVELOPMENTAL
4 DISABILITIES. The executive director shall convene a panel of not fewer
5 than three persons with expertise in ~~mental retardation~~ who shall
6 INTELLECTUAL AND DEVELOPMENTAL DISABILITIES TO assess the
7 qualifications of licensed psychologists and make recommendations to the
8 executive director OR HIS OR HER DESIGNEE.

9 **SECTION 18.** In Colorado Revised Statutes, 26-11-207, **amend**
10 (5) as follows:

11 **26-11-207. Family caregiver support program - creation.**

12 (5) The area agency on aging shall give priority for services under the
13 program to older individuals with greatest social and economic need, with
14 particular attention to low-income older individuals, and to older
15 individuals providing care and support to persons with ~~mental retardation~~
16 ~~and related~~ INTELLECTUAL AND developmental disabilities.

17 **SECTION 19.** In Colorado Revised Statutes, 27-66-105, **amend**
18 (1)(e) as follows:

19 **27-66-105. Standards for approval.** (1) In approving or
20 rejecting community mental health clinics for the purchase of behavioral
21 or mental health services, the executive director shall:

22 (e) Require that each clinic from which services may be purchased
23 be under the control and direction of a county or community board of
24 health, a board of directors or trustees of a corporation, for profit or not
25 for profit, a regional mental health ~~and mental retardation~~ board, or a
26 political subdivision of the state;

27 **SECTION 20.** In Colorado Revised Statutes, **amend** 27-66-106

1 as follows:

2 **27-66-106. Federal grants-in-aid - administration.** The
3 department is designated the official mental health and ~~mental retardation~~
4 authority, and is authorized to receive grants-in-aid from the federal
5 government under the provisions of 42 U.S.C. sec. 246, and shall
6 administer said grants in accordance therewith.

7 **SECTION 21. Act subject to petition - effective date.** This act
8 takes effect at 12:01 a.m. on the day following the expiration of the
9 ninety-day period after final adjournment of the general assembly (August
10 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
11 referendum petition is filed pursuant to section 1 (3) of article V of the
12 state constitution against this act or an item, section, or part of this act
13 within such period, then the act, item, section, or part will not take effect
14 unless approved by the people at the general election to be held in
15 November 2018 and, in such case, will take effect on the date of the
16 official declaration of the vote thereon by the governor.